

EXHIBIT C

 **COPY**

THE STATE OF NEW YORK : COUNTY OF CORTLAND
CITY OF CORTLAND COURT
CRIMINAL PART

The People of the State of New York,

Plea/Sentencing

-against-

Docket 04/38911

JAMES H. GOULD,

(CD/AUDIO)

Defendant.

June 28th, 2005
25 Court Street - City Hall
10:30 a.m.
Cortland, New York 13045

Before:

HON. THOMAS A. MELDRIM,
City Court Justice

A P P E A R A N C E S:

DAVID HARTNETT, CORTLAND COUNTY DISTRICT ATTORNEY

46 Greenbush Street - Suite 302

Cortland, New York 13045

BY: **WENDY FRANKLIN**, Assistant District Attorney

TRACY & EDWARDS, Esqs.

Attorneys for Defendant Gould

317 South Little Tor Road

New City, New York 10956

BY: **JOHN S. EDWARDS**, Esq., Of Counsel

Transcribed by: Patricia A. Puleo, NYS Court Reporter

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2 THE COURT: Good morning, Mr. Edwards and
3 Mr. Gould and Ms. Franklin.

4 I will note that we have before us here
5 this morning is the People of the State of New
6 York versus James H. Gould.

7 We have Mr. Gould present with his
8 attorney Mr. Edwards.

9 We have Ms. Franklin from the District
10 Attorney's office.

11 We are on here today for a disposition
12 based upon the correspondence I have received
13 from Counsel, specifically I think the letter
14 from Ms. Franklin, dated May tenth.

15 MS. FRANKLIN: That's correct, Your Honor.

16 THE COURT: Which outlines the agreement
17 with respect to the disposition.

18 Before we proceed, Mr. Edwards anything
19 you would like to say procedurally about how we
20 are going to go forward here today and we have
21 got some motions pending, so I just want to make
22 sure we resolve everything at today's session.

23 MR. EDWARDS: Your Honor, it is my
24 understanding that Mr. Gould would enter a plea
25 of Guilty to Harassment, in the second degree, a

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2 violation.

3 THE COURT: We are not picking you up on
4 the mic, so maybe you can step up here with your
5 attorney please we don't have the mics on the
6 table right now, so --

7 MR. EDWARDS: Your Honor, it is my
8 understanding that Mr. Gould will be entering a
9 plea of Guilty this morning to Harassment in the
10 Second Degree as a violation and that the
11 parameters of the sentence will be in accordance
12 with the letter to which you have made reference.

13 Subsequent to receiving that letter, and
14 before communicating with the Court that there
15 was a disposition, I spoke with Ms. Franklin.

16 It was something we had discussed at one
17 point in time in Chambers that the allocution
18 that is required will be limited to that which
19 -- or to the admissions that he had made on the
20 evening of the occurrence and that was acceptable
21 to Ms. Franklin.

22 THE COURT: Do have those admissions in
23 front of you?

24 MR. EDWARDS: I have a copy of the police
25 report.

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2 THE COURT: I'm sure I have those somewhere
3 in there.

4 MR. EDWARDS: Reference filed April 25,
5 2004, I'm not sure that -- well, it's in the
6 area of 4/24/04 but not otherwise dated -- I'm
7 sorry; at the end it is dated 4/24/04 yes.

8 THE COURT: And the subsection that we were
9 going to be speaking of, assuming we are going to
10 reference a specific subsection.

11 MR. EDWARDS: Excuse me a moment, please.

12 (Off-the-record-discussion.)

13 MR. EDWARDS: Okay, Your Honor. It is
14 240.26, Subdivision 3.

15 THE COURT: And Mr. Gould you have
16 discussed this disposition with your attorney,
17 Mr. Edwards?

18 MR. GOULD: Yes, I have.

19 THE COURT: And you are satisfied with this
20 disposition?

21 MR. GOULD: Yes, I am Your Honor.

22 THE COURT: You are satisfied with the
23 services provided by your attorney?

24 MR. GOULD: Yes, I am.

25 THE COURT: You understand that you are

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going to be giving up certain rights should we
proceed to a plea here today?

MR. GOULD: Yes.

THE COURT: You have a right to a Jury
trial. You will be giving that right up.

Do you understand that?

MR. GOULD: Yes, I do.

THE COURT: You have a right to testify.
You are giving up that right. Do you understand
that?

MR. GOULD: Yes.

THE COURT: You have a right to call
witnesses. You are giving up that right.

You have a right to have the People prove
the charges beyond a reasonable doubt.

Do you understand that?

MR. GOULD: Yes, I do Your Honor.

THE COURT: Okay. And you would be
pleading Guilty to a violation, not a crime;
Penal Law 240.26, Subdivision 3, Harassment in
the Second Degree, which carries a maximum
punishment of fifteen days in jail, a fine up to
\$250, court charges in the amount of \$95.00.

You do understand that?

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MR. GOULD: Yes.

THE COURT: Which states that a person is guilty of Harassment in the Second Degree, when with intent to harass, annoy or alarm another person, when he or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serves no legitimate purpose, so the essential elements are that it would be an intent to annoy, harass or alarm that you engaged in a course of conduct or acts repeatedly that would annoy such person and serve no legitimate purpose.

Do you understand all of that?

MR. GOULD: Yes, I do Your Honor.

THE COURT: We were going to note on the record that the plea of Not Guilty is withdrawn.

MR. EDWARDS: It is, Your Honor.

THE COURT: And the People are consenting to Mr. Edwards' motion to amend to Penal Law 240. 26, subdivision 3 or otherwise joins in that motion?

MS. FRANKLIN: That's right, Your Honor and at this point I guess we would also like it very clear on the record that Mr. Edwards will be

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1 withdrawing his motions and all of those things.

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3 Mr. Edwards: We withdraw all motions
4 previously made, decided or undecided, yes, as a
5 condition of the disposition.

6 THE COURT: Now, the People have made a
7 representation with respect to the disposition
8 which I have before me, that the letter dated May
9 tenth, the sentencing would include a one-year
10 conditional discharge and any form of treatment
11 deemed appropriate.

12 I guess I am a little bit confused as to
13 what would be appropriate, given the fact that
14 this gentleman I believe, as previously
15 represented, has had an evaluation and that
16 evaluation did not recommended any treatment.

17 MS. FRANKLIN: That's fine, Your Honor.

18 THE COURT: So, we wouldn't be agreeing
19 that he engage in any treatment.

20 A permanent one-year Order of Protection
21 on behalf of the victim or in favor of the victim
22 will issue.

23 That will be a Court Order, which will
24 expose you to some potential liability if you
25 violate that Order, which is the Class "A"

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Misdemeanor of Criminal Contempt and it was agreed and recommended that you complete fifty hours of community service at a location that does not involve children.

MR. GOULD: Yes, Your Honor.

THE COURT: And I think I would be looking to Counsel and to the Defendant for some direction with respect to an appropriate site that the Court would approve.

We would be noting that insofar as you can waive such rights, you would be waiving any appeal rights.

You will be waiving your speedy trial rights under the Criminal Procedure Law with respect to a general speedy trial, as well as statutory speedy trial.

You will waive that condition and you would allocute at the time entry of this plea.

Those are the general conditions of this plea.

Any questions about those, from your prospective, Mr. Edwards, Mr. Gould or Ms. Franklin?

MR. EDWARDS: Your Honor, with respect to

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2 to the community services, as we had indicated in
3 a past conference, in anticipation of a possible
4 disposition and whether there was one or not,
5 Mr. Gould had engaged in community service with
6 Meals on Wheels in Orange County.

7 THE COURT: Okay, so we would ask that
8 that service, when documented, be considered in
9 satisfaction of the agreed upon condition.

10 THE COURT: Assuming that you can forward
11 to the Court a letter from the agency indicating
12 that, when it will be acceptable for Mr. Gould to
13 complete the community service at that agency.

14 MR. EDWARDS: Yes, he has already done so
15 Your Honor; not the letter, but the community
16 service.

17 THE COURT: That is completed you are
18 saying?

19 MR. EDWARDS: Yes, it was done during the
20 course of these proceedings and in the
21 expectation that when or if a disposition was
22 reached, it would include some form of community
23 service.

24 I think it may have been in response to
25 the initial plea offer when we received the

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letter.

THE COURT: That community service completion and the way it was done, that will be satisfactory to the People?

MS. FRANKLIN: Yes, Your Honor. That is fine.

THE COURT: Now, understanding all of that, the Court is now granting the motion to plead to Penal Law 240.26, subdivision 3, Harassment in the Second Degree, a violation.

Mr. Gould, how do you plead to that charge?

MR. GOULD: Guilty, Your Honor.

THE COURT: Okay, now I am looking in front of me at statements that were made by you allegedly to a police officer, the police officer who investigated this particular incident.

That would have been Officer Abbott. Those statements were attached to the Accusatory and I believe that is what we intend to rely on here with respect to this plea.

We are noting also that this is bargained for plea.

Correct?

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2 MR. EDWARDS: Yes.

3 THE COURT: Allowing this Defendant to
4 plead to a lesser offense than what he was
5 charged with?

6 MR. EDWARDS: Yes.

7 THE COURT: And you do know that it,
8 it's in your best interest to enter this plea
9 here today?

10 MR. GOULD: Yes, I do Your Honor.

11 THE COURT: Now, those statements relate
12 to the report of April 24th, 2004, which is the
13 date of this incident herein in the city of
14 Cortland.

15 Do you know on that date that you did
16 approach a fourteen-year-old, so-called kid in
17 this statement.

18 Is that correct?

19 MR. GOULD: Yes, I did, Your Honor.

20 THE COURT: And he did not approach you,
21 but you approached him?

22 MR. GOULD: That is correct.

23 THE COURT: And did you ask him where a bar
24 was?

25 MR. GOULD: I did, Your Honor.

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2 THE COURT: Okay, and did you further ask
3 him where a gay bar was?

4 MR. GOULD: No, I did not, Your Honor.

5 THE COURT: Well, that is in your
6 statement. Maybe you want to review that
7 statement?

8 MR. EDWARDS: Your Honor, the statements
9 indicate that he was asked that.

10 THE COURT: So, you are not saying that
11 you asked that, but that was the statement of the
12 Officer?

13 MR. GOULD: That's correct.

14 THE COURT: You are clear here in stating
15 that you did approach a fourteen-year-old, on
16 your own, without any -- without the young man
17 approaching you and you asked him where a bar
18 was?

19 MR. GOULD: That's correct, Your Honor.

20 THE COURT: Is there anything more that we
21 want to ask this defendant here, Ms. Franklin?

22 MS. FRANKLIN: Well ---

23 THE COURT: I'm just looking at your letter
24 --- I mean I am looking at his statement and we
25 understand he is pleading to a lesser offense, a

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bargained for plea.

You want to make certain that that allocution is satisfactory to the People, is satisfactory to the defendant and Counsel for the defendant, as well as the Court.

Understanding that the Court would be accepting the plea to this lesser offense, is that allocution satisfactory to you?

MS. FRANKLIN: Yes, Your Honor, it is.

THE COURT:. Now, Mr. Edwards?

MR. EDWARDS: It is, Your Honor.

THE COURT: Okay, so I am going to accept your Guilty plea, subject to what we have said with respect to the items set forth in the letter of May tenth.

Now, with respect to sentencing, I know there is no agreement with respect to the sentence, but I think I made it plain and clear that I am going to follow the recommendations of the People.

I think this was agreed upon between the parties, something that I had previously indicated to Counsel that seemed to be an appropriate disposition in this matter.

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2 Anything further that the People want to
3 say before I proceed to sentence?

4 MS. FRANKLIN: No, Your Honor.

5 THE COURT: Now, Mr. Edwards?

6 MR. EDWARDS: Well, Your Honor, as we
7 have discussed in the past, albeit in Chambers
8 and not on the record, I have known Mr. Gould for
9 the better part of twenty, plus years.

10 I know him. I know his wife. I know all
11 of the members of the family.

12 I know the type of person that he is. He
13 is a good father. A good husband and a long
14 standing employee of the County of Rockland for a
15 little over 25 years, without any prior
16 incidents.

17 His conduct to that extent, constitutes a
18 violation. It is clearly aberrational on his
19 part, an exercise of undoubtedly, poor judgment
20 and something that I fully expect will never be
21 repeated.

22 We have provided Your Honor for the
23 purposes of review, as we had with the DA's
24 Office, an evaluation by a well respected, local
25 forensic psychiatrist, who was the forensic

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2 psychiatrist at the Rockland County Family Court
3 for more than twenty years and who was the
4 forensic, the exclusive forensic examiner for
5 Family Court matters and he has reported to the
6 Court that Mr. Gould does not or is not in need
7 of any treatment at this time and this conduct
8 was aberrational at best.

9 So, under the circumstances, Your Honor,
10 we think the disposition is an appropriate one
11 and that the conditions to which we have agreed
12 with the District Attorney, as part of that
13 disposition, are appropriate and I would ask that
14 the Court honor that agreement and impose the
15 sentence, as set forth in the May tenth letter,
16 which embodies part of the agreement.

17 THE COURT: Is there anything that you
18 would like to say, Mr. Gould?

19 MR. GOULD: No thank you, your Honor.

20 THE COURT: This matter is finally coming
21 to a conclusion and I am accepting your plea and
22 imposing the sentence based upon my review of all
23 of the circumstances, including many of the
24 documents that have been submitted in court with
25 respect to your background, your lack of any

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prior criminal history, as well as all of the issues that have been raised by your attorney and I would say that you certainly have been well represented in this matter.

I am going to therefore impose the following sentence, a conditional discharge for a period of one year, terms and conditions of which will be in writing.

There will be one, special condition, in addition to the statutory, general conditions, and that is that the Defendant shall provide the Court with proof of completion of fifty hours of community service at a site acceptable to the Court, prove to be provided to the Court on or before July fifteenth of 2005.

So, I am assuming you can get me a letter from the provider on the letterhead indicating that he has completed fifty hours community service.

I think it would be helpful if you indicated the dates that he completed that service so that we know it was done subsequent to this arrest, okay?

MR. EDWARDS: Yes.

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2 THE COURT: In addition, I will be signing
3 a permanent Order of Protection --- now, when I
4 say a permanent Order, it a one-year Order of
5 Protection and it is in favor of the victim.

6 We recognize that you don't live here and
7 the victim lives here, so we don't anticipate any
8 problem.

9 The Order does say "...no communication,
10 no contact", so that means just what it says; no
11 phone calls, e-mails, nothing, no letters of
12 apology or whatever.

13 You are just not going to have any contact
14 with this person. If it is alleged that you do
15 have some contact, then you could be charged with
16 criminal contempt.

17 You certainly don't want to have that
18 happen.

19 In addition, the Court had considered the
20 imposition of a fine, which I could impose up to
21 \$250.

22 I think, given all of the circumstances
23 as I find them, that would serve no legitimate
24 purpose in this instance,

25 Therefore, I will --- I will not be

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2 imposing a fine.

3 I am going to impose court charges in the
4 amount of \$95.00.

5 When can you pay that?

6 MR. GOULD: Today.

7 THE COURT: You can do it by credit card or
8 by going down the hallway and get it taken care
9 of.

10 MR. GOULD: Yes.

11 THE COURT: As an Officer of the Court I
12 think I will have you serve the Order of
13 Protection if you can do that, Ms. Franklin,
14 rather than call an Officer in.

15 MS. FRANKLIN: Yes.

16 THE COURT: Off-the-record.

17 THE COURT: Mr. Edwards, will you have Mr.
18 Gould sign that?

19 MR. EDWARDS: Yes. Off-the-record.

20 THE COURT: You, Mr. Edwards have a copy
21 for your client and here's a copy of the Order of
22 Protection, one for your file also, Ms. Franklin.

23 That should conclude the matter here
24 today.

25 Any questions?

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2 MR. EDWARDS: Yes, one item, Your Honor,
3 pursuit to Section 160.55 or 160.50, there is a
4 sealing order, with the exception of the Court's
5 records, and I request that we enter that order.

6 THE COURT: That will be entered.

7 MR. EDWARDS: Thank you.

8 THE COURT: Thank you very much.

9 MR. GOULD: Thank you, your Honor.

10 THE COURT: Good luck to you.

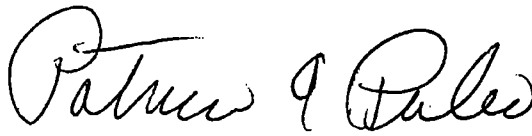
11 You can go down the hallway and take care
12 of that fine.

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16 * * *

1 STATE OF NEW YORK)
2
3 COUNTY OF CORTLAND) ss:
4

5 I, Patricia A. Puleo, certify that I am a New York State certified
6 Court Reporter, Notary Public and certified 4-track and digital recorder
7 transcriber.

8 I further certify that the foregoing transcript of audio taped
9 proceedings regarding the matter of the **People of the State of New York**
10 **versus JAMES H. GOULD**, prepared to the best of my abilities, using
11 digital electronic transcription equipment and CD-Rom(s) or 4-track audio
12 tapes as provided by **CORTLAND CITY COURT**, and is a true and
13 accurate transcript of said proceedings.
14

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17
18 Patricia A. Puleo, Court Reporter

19 Dated: 10/25/05
20

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